

STATE WATER RESOURCES CONTROL BOARD

ADMINISTRATIVE PROCEDURES MANUAL

ADMINISTRATIVE SERVICES

CHAPTER 4.4

STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT

This chapter describes how Regional Boards, the State Board and other public agencies can access the Cleanup and Abatement Account for grants to clean up a condition of pollution affecting water quality. It also explains how Regional Boards can request reimbursement and offsets from court ordered fines and Administrative Civil Liabilities.

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AUTHORITY

The Cleanup and Abatement Account (CAA) was created by Water Code Sections 13440-13443. Monies received from court judgments and the assessment of administrative civil liabilities (ACLs) fund the Account.

USE OF THE ACCOUNT

The use of the account is limited to:

- Contracting for services to cleanup a waste or abate the effects of a waste.
- Remediating a significant unforeseen water pollution problem.
- Paying the appropriate administrative, legal, technical, and oversight costs associated with a cleanup effort.
- Covering appropriate costs associated with administration of the account.
- Covering appropriate costs associated with overseeing or tracking the implementation of a supplemental environmental project (SEP) required as a condition of an order, imposing administrative civil liability.

The following may utilize the account:

- The State Water Resources Control Board (SWRCB).
- The Regional Water Quality Control Boards (RWQCB).
- Any public agency with the authority to clean up waste or abate the effects thereof.

MANAGEMENT OF THE ACCOUNT

Management of the CAA is the responsibility of the SWRCB's Division of Financial Assistance (DFA). The management functions include:

- Processing of all requests for cleanup and abatement funds.
- Analyzing all requests for fund use.
- Approving or denying requests for up to \$100,000.
- Taking requests exceeding \$100,000 to the SWRCB for its review and approval.
- Providing technical assistance to applicants for use of the fund.
- Conducting an annual survey of CAA recipients to determine project status.
- Review and update CAA procedures as necessary.
- Review progress reports and final reports for funded projects.

CAA MANAGEMENT SUPPORT SERVICES

The Office of the Chief Counsel (OCC) and the Division of Administrative Services (DAS) will assist DFA in managing the fund. OCC shall respond to all inquiries regarding any legal question regarding the eligibility of a specific applicant, the eligibility of a specific project, or legal issues related to the use of the Account. DAS shall be responsible for the fiscal administration of the Account, including the payments to recipients. DAS shall produce monthly reports showing the condition of the fund and all encumbrances. DAS shall also assume responsibility for preparation of any budgetary documents necessary to appropriately expend these funds.

ELIGIBILITY FOR FUNDING

1. RWQCBs may be eligible for reimbursement of their expenditures incurred obtaining court ordered fines or ACLs that are deposited in the CAA. If the enforcement action assisted in the cleanup of a waste or abatement of its effects on the waters of the state, or addressed a significant unforeseen water pollution problem posing an actual or potential health threat, the RWQCB may use the money reimbursed for any activity consistent with the RWQCB's mission and objectives. If the enforcement action did not achieve this result, then the RWQCB may only use the money reimbursed for those purposes stated in Water Code Sections 13442 or 13443. In either case, the RWQCB must provide adequate documentation in its funding application of the enforcement actions taken and the expenditures associated with those actions. Reimbursement of expenditures is limited to 50 percent of the fine payments received or actual expenditures, whichever is less.
2. The RWQCBs are eligible to receive funding for costs incurred overseeing and tracking the implementation of supplemental environmental projects required as a condition of an order imposing an ACL.
3. The RWQCBs, the SWRCB and other public agencies may apply for funds for special CAA projects that comply with the purposes stated in Water Code Sections 13442 or 13443. DFA will request that public agency applicants, other than the SWRCB, submit a RWQCB concurring resolution for all projects presented to the SWRCB.

Each application for CAA funds will be judged on its merits. In general, the SWRCB will give highest priority to requests for reimbursement of costs incurred pursuing enforcement actions and proposals that clean up or abate a condition of pollution.

APPLYING FOR ACL REIMBURSEMENT/OFFSET (RWQCB ONLY)

Requests from the RWQCB Executive Officer or his designee should be in memo format and addressed to:

Ms. Barbara L. Evoy, Division Chief
Division of Financial Assistance
State Water Resources Control Board
P. O. Box 944212
Sacramento, CA 94244-2120

Information in the memo should include the following items:

- The name or names of the party (ies) paying the court ordered fine or ACL.
- The ACL number assigned.
- The dates and amounts of the checks deposited in the CAA.
- Detail of the costs incurred by the RWQCB (use Attachment I).
- A description of either: 1) how the enforcement action assisted in the cleanup of a waste or abatement of its effects on the waters of the state or addressed a significant unforeseen water pollution problem posing an actual or potential health threat or 2) the specific activities for which the funds will be used (use the criteria below under Applying for Project Funding).

APPLYING FOR PROJECT FUNDING

Requests should be made in writing and include or address the following items as appropriate:

- Agency name and address.
- If the agency is not a RWQCB, it's authority to cleanup a waste.
- The waste discharged or potentially discharged.
- The location of the discharge and the impact on groundwater or surface water.
- The threat to water quality and public health posed by the waste (if applicable).
- The agency's available resources to perform the cleanup.
- Efforts made to secure alternative funding.
- Impact on the community or surrounding area if the project is not approved for funding from the CAA.
- The entity or individual responsible for the discharge of the waste.
- Evidence there is no viable responsible party to pay the cost of cleanup or abatement.
- The steps the agency will take in conducting the cleanup or abatement (applicants are strongly encouraged to attach a work plan that provides enough detail to explain the project's course, including costs for each phase).
- Evidence the local RWQCB has issued a Cleanup and Abatement Order regarding the site (if applicable).
- RWQCB participation in this request (attach a copy of the RWQCB's resolution of support, if available).

All requests should be addressed to:

Ms. Barbara L. Evoy, Division Chief
Division of Financial Assistance
State Water Resources Control Board
P. O. Box 944212
Sacramento, CA 94244-2120

APPLYING FOR SEP OVERSIGHT FUNDING (RWQCBS ONLY)

Requests should be made in writing and include or address the following items as appropriate:

- Agency name and address.
- Basis for imposing the ACL that lead to the SEP request.
- Reason for requesting a SEP.
- Impact on the community or surrounding area if the project is not approved for funding from the CAA.
- The steps the agency will take in carrying out the SEP.
- Substantiation of the agency's agreement to participate in the SEP.

All requests should be addressed to:

Ms. Barbara L. Evoy, Division Chief
Division of Financial Assistance
State Water Resources Control Board
P. O. Box 944212
Sacramento, CA 94244-2120

URGENCY REQUESTS

The RWQCB Executive Officers (or their designees) or public agencies may request funds verbally for amounts up to \$100,000 when there is an urgent need to clean up or abate the pollution. These requests shall be directed to the DFA Chief. In the absence of that individual, other designated staff should be called in the order listed: the Chief Counsel, the Executive Director, one of the deputy directors or the DAS Chief. Any of these individuals may review and approve the request. Within one week following the oral request, the requesting agency shall submit a written application per the information under Applying for Project Funding, previous page.

CONTRACTS

Contracts executed by the RWQCB consistent with Water Code Section 13304 and funded by the CAA are exempt from General Services review. When time permits, these contracts should be in writing. Otherwise, Section 13304 allows RWQCBs to enter into oral contracts. Whenever the RWQCB enters into a contract, its terms must be documented and submitted to DFA within one week of the date of the contract. If it is an oral agreement, DFA will forward the documented information to the Accounting and Contracts Offices.

PROJECT REPORTING

For CAA projects, the agency or RWQCB shall submit progress reports to DFA documenting the progress of the project, efforts to recover costs and projections for future expenditures. The progress reports are due at the end of each fiscal year. Information submitted should include the following: CAA number and project name;

If DFA determines that funds are not being used for the purposes specified by the SWRCB, further disbursements may be stopped.

The agency or RWQCB shall notify DFA upon project completion and submit a follow-up report. This report must summarize the project's accomplishments and efforts to recover CAA expenditures from the responsible party (ies), as well as indicating the total CAA money spent. DFA will review the report to verify that the agency performed the work.

CLEANUP AND ABATEMENT ACCOUNT MANAGEMENT REPORT

A status report on the CAA will be in the monthly State Water Quality Control Fund Management Report prepared by the Accounting Office. This is an ongoing report, which identifies all outstanding accounts. It includes all relevant Account information outlined on the CAA statement (CAA-1). The report is provided to DFA. DFA and DAS must report to the Executive Office and RWQCB management on the status of projects and funding at least quarterly.

RECOVERING COSTS AND DE-OBLIGATION OF COMMITMENTS

The SWRCB may pursue the recovery of CAA funds expended when a discharger refuses to perform or pay for the work as specified (Water Code Section 13304(c)). Project recipients are expected to provide DFA information on progress made in identifying viable responsible parties.

Any funds not expended by the project end date may be disencumbered. The agency receiving funds has 90 days after the project end date to submit an invoice. DFA may grant a time extension if no additional funding is required. If additional funding is required, the SWRCB or

DFA chief must give approval. Disencumbered funds are available for recommitment to other projects.

MAINTAINING THE FUND BALANCE

DFA will not approve or recommend approval of projects that over-commit the CAA, unless there is a significant unforeseen emergency. To determine whether a project will over-commit the Account, DFA will estimate the year-end uncommitted balance and deduct budget-year obligations effective July 1.¹ The uncommitted balance in excess of that amount is considered available for projects. In the event of a significant unforeseen emergency, the DFA Chief may approve or recommend approval of a project that over-commits the CAA by 25 percent of the annual allocation for the Spills, Leaks, Investigations and Cleanup (SLIC) Program.²

¹ Annual July obligations include SLIC, other agency appropriations and CAA management.

² Since the SLIC allocation from the CAA is for a cost recovery program that continuously reimburses the Account and recovery rates have historically not presented a cash flow problem, a twenty-five percent over-commitment is a reasonable option.

CLEANUP AND ABATEMENT ACCOUNT (CAA)

PROCEDURES FOR REQUESTING FUNDING

WHO	DOES WHAT
Public Agency/RWQCB	<p>Determines funding needs, cost of project and alternative fund sources.</p> <p>Prepares letter of application for funds under one of the following criteria: Applying for ACL Reimbursement/Offset, Applying For Project Funding or Applying For SEP Oversight Funding. (The Regional Board Executive Officer or agency official in charge must sign the correspondence.)</p> <p>If the request is from a RWQCB, submits a RWQCB resolution of support. If the request is from another public agency, a similar RWQCB resolution of support is strongly recommended.</p> <p>For RWQCB ACL reimbursement or offset requests, submits a completed Cost Recovery Work Sheet (Attachment I) along with correspondence signed by the Executive Officer explaining the reason for the request.</p> <p>Submits the letter of application to DFA for review and approval.</p>
DFA	<p>Reviews the request to determine if the required information is included.</p> <p>Establishes a temporary project file.</p> <p>If staff reimbursement or offset costs are requested, verifies receipt of ACL funds by the Accounting Branch.</p> <p>Notifies the appropriate RWQCB Executive Officer of any application for funds by a public agency within the Region and determines whether the RWQCB is likely to support proposal.</p> <p>Analyzes the request and prepares a preliminary recommendation for division management.</p> <p>If the request is for less than \$100,000, the Division Chief may approve or deny. If the request is for an amount greater than \$100,000, staff prepares an agenda item for the SWRCB's Workshop and Board meeting. (Follow SWRCB guidelines for adding items to the agenda.)</p>
SWRCB/DFA Chief	<p>Approves, modifies or rejects request for funds.</p>

WHO	DOES WHAT
DFA	<p>Notifies the applicant of approval, disapproval or modification of request.</p> <p>Prepares Program Change Proposal to add funding to the budget (follow SWRCB guidelines for adding funds to the proper organization's budget) and prepares a Request for Cleanup and Abatement Funds (Attachment II) to encumber the money in the CAA.</p> <p>Routes Program Change Proposal to the Budget Branch and Request for Cleanup and Abatement Funds to the Accounting Branch.</p>
Budget Branch	<p>Adds funds to the budget per the Program Change Proposal.</p>
Accounting Branch	<p>Encumbers the CAA funds per the Request for Cleanup and Abatement Funds.</p> <p>Reviews the payment request, determines that funds have been encumbered for the project, prepares a claim schedule in the amount approved for payment and submits to the State Controller for warrant preparation and distribution.</p>
Public Agency/RWQCB	<p>Prepares and submits the Request for Payment (Attachment III) and the accompanying invoice to DFA.</p> <p>Submits CAA Progress Report to DFA documenting progress of the project and use of funds.</p>
DFA	<p>Reviews and approves Requests for Payment.</p> <p>Tracks monthly CAA expenditures statewide.</p>